

Remarks

By this amendment, Claim 1 has been amended to recite the character of the gemini surfactant in greater detail, Claim 32 has been cancelled and new Claim 45 has been added. Claim 45 is directed specifically to the feature that the at least one additional detergent component is an acylated protein condensate. Clearly none of the references disclose or suggest the composition of Claim 45.

Turning to the art rejections, Claims 1-4, 8-14 and 33-37 stand rejected as obvious over Kwetkat et al. (U.S. 6,156,721) in view of Hagan (US 5,490,955) or Linton. The rejection is respectfully traversed.

As recognized by the Examiner, Kwetkat et al. does not teach the use of an anionic surfactant such as an acyl lactylate or a composition containing a gemini surfactant, an acyl lactylate water and components set forth in the dependent claims. In an attempt to cure this infirmity of Kwetkat, the Examiner relies on Hagan or Linton.

Applicants' claimed composition and the composition of Hagan are essentially directed at solving the same problem, i.e., a mild cleansing composition for human skin or hair that has desirable foaming or lathering characteristics. Applicants' solution to this problem as set forth in Claim 1 is to use a gemini surfactant and one of the "additional detergent components" set forth in Claim 1. Hagan on the other hand teaches (column 1, lines 66) that the solution to the mild cleansing/good foaming problem is to use a "narrow range of acyl lactylates in combination with specific co-surfactants" and that the finding that the use of this composition provides the unexpected results of providing a composition exhibiting mild cleaning and good foaming/lather. As evidenced by the numerous examples in Hagan, Hagan goes to great extent to show that the specific composition which shows the unexpected result is comprised of the acyl lactylates set out in column 2, lines 1-20 and the specific co-surfactants set forth in column 2, line 20 – column 4, line 21. Hagan does not suggest that any co-surfactants would provide the unexpected results achieved by the combination of the acyl lactylates and the enumerated co-surfactants. Accordingly, not only does Hagan fail to cure the infirmities of Kwetkat, Hagan actually teaches away from Applicants' claimed composition by expressly stating that the unexpected results achieved can only be accomplished with a "narrow range of acyl lactylates in combination with specific co-surfactants." Thus, not only would there be no motivation to combine Kwetkat and

Hagan, quite the opposite is true. It is respectfully submitted that all present claims are patentable over Kwetkat in view of Hagan.

With respect to the combination of Kwetkat and Linton, it is to be noted that the title of the Linton reference is “Acyl lactylates in Cosmetics.” Furthermore, the teachings which the Examiner refers to on page 52, column 2, deal strictly with cosmetics and cosmetics are not high foaming, mild skin cleansers. As to the reference on page 54, column 2, those lines of Linton again speak only to the use of acyl lactylates in formulating cosmetics – not in formulating high foaming, mild general purpose skin and hair cleansers. Lastly with respect to Linton the Examiner, referencing page 57, column 2 of Linton, points to the fact that acyl lactylates in detergent based products such as bubble baths, liquid soaps, facial cleansers and syndet bars are desirable in preventing defatting and leaving a silky, talc-life feel on the skin. The Examiner also specifically references a shampoo composition on page 57, column 1. Cast in its best light vis-à-vis Applicants’ claims, Linton does teach that acyl lactylates can be used in bubble baths, liquid soaps, facial cleansers and in certain types of shampoos. Linton does not teach that the acyl lactylates, when combined with a gemini surfactant would provide a mild, good foaming, general purpose skin and hair cleanser. Stated differently, the skilled artisan when presented with the problem of formulating a mild good foaming skin cleanser which contained a gemini surfactant would have no reason to believe from reading Linton that the use of a acyl lactylate was the solution to that problem. Indeed any suggestion to combine Kwetkat with Linton can only be arrived at by resort to Applicants’ disclosure. Linton clearly teaches nothing about good foaming skin and/or hair cleansers and indeed in the portion of Linton on page 57, column 2, with respect to the use of acyl lactylates in bubble baths, the teaching of Linton is not that good foaming is imparted to the bubble baths, liquid soaps, facial cleaners, etc. Rather the teaching is that by incorporating the acyl lactylates in these materials, e.g., bubble bath, the result obtained is defatting of the skin plus leaving a silky, talc-like feel. Reasonably read, Linton teaches that acyl lactylates are useful in cosmetics – not in high-foaming mild skin and hair cleansers. It is respectfully submitted that all claims are patentable over Kwetkat combined with Linton.

Claims 1-4, 8-14 and 33-37 stand rejected as obvious over Hagan or Linton in view of Kwetkat. Basically this rejection is the reverse of the other 103 rejection based on the same combination of references and presents the same problems discussed above with respect to the

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other 103 rejection. More specifically, as to Hagan et al. in combination with Kwetkat, Hagan teaches that specific co-surfactants must be employed to achieve the unexpected results. As to Linton and Kwetkat, again there is no clue in Linton that by combining the acyl lactylates disclosed in that reference with a gemini surfactant one would achieve a good foaming, mild skin and/or hair cleanser. In essence, this 103 rejection suffers from the same infirmities as the 103 rejection discussed in detail above as set forth starting on page 5 of the Office Action. Accordingly, it is respectfully submitted that all claims under consideration are patentable over Hagan or Linton in view of Kwetkat.

Applicant notes the double patenting rejection based on U.S. Patent 6,710,022 in view of Hagan or Linton. Since this is a non-statutory obviousness-type double patenting rejection, Applicant is prepared to file a terminal disclaimer upon the indication of allowable subject matter and Applicant respectfully requests the Examiner's indulgence in this respect.

In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 1-4, 8-14, 33-37 and 45 are in condition for allowance which is hereby earnestly solicited and respectfully requested.

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